



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I-EPA NEW ENGLAND  
ONE CONGRESS STREET, SUITE 1100  
BOSTON, MA 02114-2023

Superfund Records Center

SITE: Beede  
BREAK: 10.7  
OTHER: 26798

IN THE MATTER OF:

Beede Waste Oil Superfund Site  
Plaistow, New Hampshire

Proceeding under Section 122(g)(4) of the  
Comprehensive Environmental, Response,  
Compensation, and Liability Act of 1980,  
as amended, 42 U.S.C. § 9622(g)(4)

U.S. EPA Docket No.  
CERCLA 1-2000-0041

ADMINISTRATIVE ORDER  
ON CONSENT  
DE MINIMIS CONTRIBUTORS

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SECTION 122(g)(4) DE MINIMIS CONTRIBUTORS

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**I. JURISDICTION**

1. This Administrative Order on Consent ("Consent Order" or "Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E and redelegated to the Director, Office of Site Remediation and Restoration, by EPA-Region I Order No. 1200, dated June 30, 1995.

2. This Administrative Order on Consent is entered into by EPA and the persons, corporations, or other entities identified in Appendix A, Section I ("Respondents") and Appendix A, Section II ("Respondent Federal Agencies"). Each Respondent and Respondent Federal Agency agrees to undertake all actions required by this Consent Order. Each Respondent and Respondent Federal Agency further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

3. EPA, Respondents and Respondent Federal Agencies agree that the actions undertaken by Respondents and Respondent Federal Agencies in accordance with this Consent Order do not constitute an admission of any liability by any Respondent or Respondent Federal Agency. Respondents and Respondent Federal Agencies do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts or Determinations contained in Sections IV and V, respectively, of this Consent Order.

**II. STATEMENT OF PURPOSE**

4. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Respondents and Respondent Federal Agencies to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive

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relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Respondents and Respondent Federal Agencies for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, to provide for full and complete contribution protection for Respondents and Respondent Federal Agencies with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

**III. DEFINITIONS**

5. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

a. "Beede Waste Oil Special Account" shall mean the special account established by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

c. "Consent Order" or "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

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g. "Paragraph" shall mean a portion of this Consent Order identified by an arabic numeral.

h. "Parties" shall mean EPA, the Respondents, and the Respondent Federal Agencies.

i. "Respondent Federal Agencies" shall mean those departments, agencies, and instrumentalities of the United States identified in Appendix A, which are resolving any claims which have been or could be asserted against them with regard to this Site as provided in this Consent Order.

j. "Respondents" shall mean those persons, corporations, or other entities listed in Appendix A.

k. "Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

l. "Section" shall mean a portion of this Consent Order identified by a roman numeral.

m. "Site" shall mean the Beede Waste Oil Superfund Site, encompassing approximately 39 acres, located at 7 Kelley Road in Plaistow, Rockingham County, New Hampshire and depicted more clearly on the map attached as Appendix B.

n. "Trust" shall mean the Beede Waste Oil Early De Minimis Settlement Trust.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities, which includes without limitation EPA and the Respondent Federal Agencies.

**IV. STATEMENT OF FACTS**

6. The Beede Waste Oil Superfund Site is located at 7 Kelley Road in Plaistow, New Hampshire and encompasses two parcels of land totaling approximately 39 acres. The Site was the location of waste oil and petroleum product storage and handling from the 1920's through August 1994. Kelley Brook, a tributary of the Merrimack River, abuts a portion of the Site. The Site is relatively flat with a steep slope adjacent to Kelley Brook and its associated wetlands to the north. Two buildings are located on-site, a newer steel office and maintenance building and an abandoned single family residence on the northern edge of the property, along Old County

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Road. A second older, dilapidated office and maintenance building was removed by EPA in 1998 to allow for sub-surface characterization of soil. The Site is surrounded by primarily residential properties which rely on private wells for their water supply. The Town of Plaistow does not have a public water distribution system. The Site was listed on the National Priorities List (NPL) of contaminated sites on December 23, 1996.

7. Hazardous substances have been released at or from the Site. Three sub-surface plumes of floating oil are present beneath the Site. The three plumes all contain hazardous substances, including volatile-organic compounds (VOCs), petroleum hydrocarbons (PHCs) and poly-chlorinated biphenyls (PCBs). The floating oil is acting as a continuing source of groundwater contamination and historically discharged into Kelley Brook. In February 2000, EPA initiated a Non-Time Critical Removal Action which includes operation of a 143 well vapor-enhanced extraction system to remove floating oil from the water table and installation of a 120 foot long interceptor trench to prevent further discharge of floating oil to Kelley Brook. The system is expected to operate for at least nine months.

Several routes of potential exposure exist, including ingestion of groundwater and contact with soil, surface water or sediment by trespassers. Two downgradient supply wells, which serve multiple residences and a small business, contain elevated levels of hazardous substances. Treatment systems have been installed to provide safe drinking water.

8. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future.

In October 1983, chemical contamination was discovered in a residential well near the Site. The well was taken out of service and an alternate water supply was provided. The Site owner and the New Hampshire Department of Environmental Services (NHDES) performed a series of subsurface investigations which verified the presence of floating oil plumes and contaminated groundwater. Initial mitigative measures taken included removal of a leaking underground storage tank ("UST"), installation and operation of an oil recovery well, and installation of water treatment systems for a well which provides water to a condominium complex and a well which jointly supplies a home and small business.

A potential floating oil problem was first discovered in June 1991, when the Site owners removed a 140,000 gallon UST. Oil-soaked soils were observed, which led to the removal of about 50 cubic yards of soil. Waste oil discharge into Kelley Brook was first observed in February 1992, verifying the presence of a floating oil plume originating from the UST. During subsequent NHDES investigations, it became apparent that several floating oil plumes were present beneath the Site.

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NHDES continued to contain the discharge using booms and sorbent pads. In July 1996, EPA and NHDES jointly initiated a time-critical removal action to remove approximately 100 above-ground storage tanks and 800 drums of abandoned waste oil containing varying levels of PCBs and hazardous wastes regulated under the Resource Conservation and Recovery Act (RCRA). A remedial investigation is underway, which is being performed as a State lead action. Upon conclusion of the remedial investigation, EPA will prepare a feasibility study analyzing alternatives for remediation of the Site. EPA currently expects to issue a Record of Decision selecting a remedial action plan for the Site in 2001.

9. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site. As of October 13, 2000, EPA has incurred response costs of approximately \$ 14,900,000.

10. Each Respondent and Respondent Federal Agency listed on Appendix A arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such Respondent or Respondent Federal Agency, by any other person or entity, at the Site.

11. The amount of hazardous substances contributed to the Site by each Respondent or Respondent Federal Agency is more than 275 gallons, but not more than 1000 gallons, of materials containing hazardous substances and the hazardous substances contributed by each Respondent or Respondent Federal Agency to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. Appendix C includes a volumetric list of the amount of hazardous substances contributed by each Respondent and Respondent Federal Agency.

12. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is approximately \$ 62,000,000. The payment required to be made by each Respondent and Respondent Federal Agency pursuant to this Consent Order is a minor portion of this total amount.

**V. DETERMINATIONS**

13. Based upon the Statement of Facts set forth above and on the administrative records for this Site, EPA has determined that:

a. The Beede Waste Oil Superfund site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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b. Each Respondent and Respondent Federal Agency is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Each Respondent and Respondent Federal Agency is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

d. There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

e. The actual or threatened "release" caused the incurrence of response costs.

f. Prompt settlement with each Respondent and Respondent Federal Agency is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

g. As to each Respondent and Respondent Federal Agency, this Consent Order involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

h. The amount of hazardous substances contributed to the Site by each Respondent and Respondent Federal Agency and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent and Respondent Federal Agency are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

**VI. ORDER**

14. Based upon the administrative records for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED:

**VII. PAYMENT**

15. Establishment of and Payment to Trust

a. Establishment of Trust. The Respondents' and Respondent Federal Agencies' payments under this Consent Order shall be made to the Beede Waste Oil Early De Minimis Settlement Trust ("Trust"), except as may be directed under Paragraph 15.c, herein. The Trust



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shall be governed and managed pursuant to the Declaration of Trust set forth in Appendix D to this Consent Order.

b. Payment to the Trust by Respondents. Each Respondent shall, by August 20, 2001, remit to the Trustee for the Trust the payment specified for that Respondent in Appendix C to this Consent Order and a fully and properly executed original Signature Page for this Consent Order. A copy of the payment and the Signature Page shall simultaneously be sent to EPA in accordance with Paragraph 17 of this Consent Order. Payment shall be made by certified or cashier's check, or money order.

Each payment made by check or money order shall be made payable to the Beede Waste Oil Early De Minimis Settlement Trust. Each check shall reference the name and address of the party making payment, the Site name, EPA Region 1 and Site Spill ID Number 011T, and the EPA docket number for this action, CERCLA 1-2000-0041. Each check or money order shall be accompanied by a completed Payment Invoice, which is included as Appendix E to this Consent Order.

Each payment, completed Payment Invoice, and a fully executed, original, Signature Page shall be sent to:

Deborah Woods  
Corporate Trust  
State Street Bank & Trust  
2 Avenue de Lafayette  
6<sup>th</sup> Floor  
Boston, MA 02111-1724

c. Payment to the Trust by Respondent Federal Agencies. The Parties to this Consent Order recognize and acknowledge that the payment obligations of the Respondent Federal Agencies under this Consent Order can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Order shall be interpreted or construed as a commitment or requirement that any Respondent Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

As soon as reasonably practicable after receipt of this Consent Order, the United States, on behalf of each Respondent Federal Agency, shall remit to the Trustee for the Trust the payment specified for that Respondent Federal Agency in Appendix C to this Consent Order and a fully and properly executed original Signature Page for this Consent Order. A copy of the payment and the Signature Page shall simultaneously be sent to EPA in accordance with

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Paragraph 17 of this Consent Order. Payment shall be made by certified or cashier's check, money order, or electronically.

If paying by check or money order, the check, completed Payment Invoice, and a fully executed, original, Signature Page shall be sent to:

Deborah Woods  
Corporate Trust  
State Street Bank & Trust  
2 Avenue de Lafayette  
6<sup>th</sup> Floor  
Boston, MA 02111-1724

If paying electronically, the payment shall be sent to:

Beede Waste Oil  
State Street Bank & Trust Company  
ABA 011-00-0028  
Corporate Trust Division  
DDA - 9903-990-1  
FFC-12663-010

In addition, for electronic payment, the completed Payment Invoice, and a fully executed, original Signature Page shall be sent simultaneously to:

Deborah Woods  
Corporate Trust  
State Street Bank & Trust  
2 Avenue de Lafayette  
6<sup>th</sup> Floor  
Boston, MA 02111-1724

If payment to the Trustee for the Trust is not made by August 20, 2001, and the Respondent Federal Agency has indicated a desire to enter into this settlement contingent on final authorization, the Respondent Federal Agency shall contact the EPA New England Superfund Legal Office to determine if the Trust is still in existence. If the Trust has been disbursed, the Respondent Federal Agency shall make payment to the Beede Waste Oil Special Account, as directed by EPA.

d. Payments and Refunds from the Trust. All payments and refunds from the Trust shall be made in accordance with the Declaration of Trust which is attached as Appendix D to this Consent Order. Funds disbursed to EPA shall be deposited in the Beede Waste Oil

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Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

16. Each Respondent's and Respondent Federal Agency's payment includes an amount for: a) past Response Costs incurred at or in connection with the Site; b) projected future Response Costs to be incurred at or in connection with the Site; and c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total Response Costs upon which Respondents' and Respondent Federal Agencies' payments are based.

17. At the time of payment made in accordance with paragraph 15, each Respondent and Respondent Federal Agency shall: 1) submit a copy of the Signature Page for the Consent Order bearing the original signature of an authorized representative of Respondent and Respondent Federal Agency; and 2) submit a copy of the payment and completed Payment Invoice to:

U.S. Environmental Protection Agency - New England Region  
Office of Site Remediation and Restoration  
P.O. Box 8908  
Boston, MA 02114  
Attention: Beede Case Team

**VIII. FAILURE TO MAKE PAYMENT**

18. If any Respondent fails to make full payment within the time required by Paragraph 15, the Respondent shall be deemed to have declined to participate in this Consent Order.

**IX. CERTIFICATION OF RESPONDENT**

19. By signing this Consent Order, each Respondent and Respondent Federal Agency certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

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b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

**X. COVENANTS BY THE UNITED STATES**

20. In consideration of the payments that will be made by Respondents under the terms of this Consent Order, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against any of the Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Respondent upon receipt of that Respondent's payment as required by Section VII. With respect to each Respondent, individually, this covenant not to sue is conditioned upon: a) the satisfactory performance by Respondent of all obligations under this Consent Order; and b) the veracity of the information provided to EPA by Respondent relating to Respondent's involvement with the Site. This covenant not to sue extends only to Respondents and does not extend to any other person.

21. In consideration of the payments that will be made by Respondent Federal Agencies under the terms of this Consent Order, and except as specifically provided in Section XI (Reservations of Rights by United States), EPA covenants not to take administrative action against any of the Respondent Federal Agencies pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. With respect to present and future liability, this covenant shall take effect for each Respondent Federal Agency upon receipt of that Respondent Federal Agency's payment as required by Section VII. With respect to each Respondent Federal Agency, individually, this covenant is conditioned upon: a) the satisfactory performance by Respondent Federal Agency of all obligations under this Consent Order; and b) the veracity of the information provided to EPA by Respondent Federal Agency relating to Respondent Federal Agency's involvement with the Site. This covenant not to sue extends only to Respondent Federal Agencies and does not extend to any other person.

**XI. RESERVATIONS OF RIGHTS BY UNITED STATES**

22. The covenants by the United States set forth in Paragraph 20, and in Paragraph 21, do not pertain to any matters other than those expressly specified in Paragraphs 20 or 21. The

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United States reserves, and this Consent Order is without prejudice to, all rights against Respondents, and EPA reserves, and this Consent Order is without prejudice to, all rights against the Respondent Federal Agencies, with respect to all other matters including, but not limited to:

- a. liability for failure to meet a requirement of this Consent Order;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or
- d. liability arising from any future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the effective date of this Consent Order.

23. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual Respondent seeking to compel that Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, and EPA reserves, and this Consent Order is without prejudice to, the right to institute administrative proceedings against any individual Respondent Federal Agency seeking to compel that Respondent Federal Agency to perform response actions relating to the Site, if information is discovered which indicates that such Respondent or Respondent Federal Agency contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Respondent or Respondent Federal Agency no longer qualifies for this early de minimis settlement because such Respondent or Respondent Federal Agency contributed more than 1000 gallons of hazardous substances to the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

**XII. COVENANTS BY RESPONDENTS AND RESPONDENT FEDERAL AGENCIES**

24. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

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- b. any claims arising out of response activities at the Site; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

25. Respondent Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law with respect to the Site. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Respondent Federal Agency in the performance of its duties (other than pursuant to this Consent Order) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

26. Respondents and Respondent Federal Agencies agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to the Respondents or Respondent Federal Agencies with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did not exceed 275 gallons.

27. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

28. Respondents and Respondent Federal Agencies covenant not to sue and agree not to assert any claims or causes of action against each other with regard to the Site pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

**XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

29. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Order. Except as provided in Paragraph 26, the United States, and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

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30. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, or an administrative proceeding initiated by EPA, Respondents or Respondent Federal Agencies shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraphs 20 and 21.

31. The Parties agree that each Respondent and Respondent Federal Agency is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are all response actions taken by the United States and by private parties, and all Response Costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site.

**XIV. PARTIES BOUND**

32. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their heirs, successors and assigns and upon Respondent Federal Agencies. Any change in ownership or corporate or other legal status of a Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

**XV. INTEGRATION/APPENDICES**

33. This Consent Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order. The following appendices are attached to and incorporated into this Consent Order:

"Appendix A" is the list of Respondents and Respondent Federal Agencies.

"Appendix B" is the map of the Site.

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"Appendix C" is the list of Respondents, Respondent Federal Agencies, and Settlement Amounts.

"Appendix D" is the Declaration of Trust for the Beede Waste Oil Early De Minimis Settlement Trust.

"Appendix E" is the Payment Invoice.

**XVI. PUBLIC COMMENT**

34. This Consent Order shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or withhold its consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper, or inadequate.

**XVII. ATTORNEY GENERAL APPROVAL**

35. The Attorney General or his designee has approved the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

**XVIII. EFFECTIVE DATE**

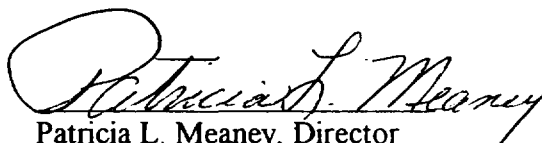
36. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents and Respondent Federal Agencies that the public comment period pursuant to Paragraph 34 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

8/29/01  
Date

By:



Patricia L. Meaney, Director  
Office of Site Remediation  
and Restoration



**ADMINISTRATIVE ORDER ON CONSENT  
SECTION 122(g)(4) DE MINIMIS CONTRIBUTORS**

---

THE UNDERSIGNED RESPONDENT enters into this Consent Order in the matter of CERCLA-1-2000-0041, relating to the Beede Waste Oil Superfund Site in Plaistow, New Hampshire:

-----  
Name of PRP: \_\_\_\_\_

Party Identification Number: \_\_\_\_\_  
-----

NAME OF RESPONDENT: \_\_\_\_\_

Signature of Representative: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Name of Representative:  
(please print) \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

\* If there is a predecessor or successor company that is also settling its liability for Respondent's disposal of hazardous substances at the Beede Waste Oil Superfund Site, that company's name must be included on this signature page. Any such entity agrees thereby to be bound by the terms of this settlement.

**A copy of the Signature Page which has the pre-printed name of the Potentially Responsible Party and the Party Identification Number is enclosed with this package.**

**ADMINISTRATIVE ORDER ON CONSENT  
SECTION 122(g)(4) DE MINIMIS CONTRIBUTORS**

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**APPENDIX D**

**DECLARATION OF TRUST**

Appendix D - Beede Waste Oil Superfund Site  
Early De Minimis Settlement Trust

**DECLARATION OF TRUST**  
**BEEDE WASTE OIL EARLY DE MINIMIS SETTLEMENT TRUST**

On this 10<sup>th</sup> day of January, 2001, State Street Bank and Trust Company, a Massachusetts bank and trust company, ("Trustee") hereby declares as follows:

WHEREAS, the Beede Waste Oil Superfund Site (the "Site") is a former waste oil facility located in Plaistow, New Hampshire, which is a federal Superfund Site;

WHEREAS, there have been releases and threats of releases of hazardous substances at the Site, and, as a result, EPA designated the Site as a Superfund Site ("Site") by placing it, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on the National Priorities List, set forth at 40 C.F.R. Part 300;

WHEREAS, the U.S. Environmental Protection Agency ("EPA") has incurred response actions in connection with the Site, and contends that certain potentially responsible parties are liable for such response cost pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a);

WHEREAS, the United States, and approximately 954 parties at the Site now seek to enter into a settlement pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), ("Administrative Order on Consent" or "Consent Order") which will resolve the approximately 570 parties' alleged responsibility for past response costs at the Site;

WHEREAS, the proposed Consent Order requires the Respondents to send their settlement payments to a trust fund, and redistribution of the Respondents' payments to the EPA.

NOW, THEREFORE, the Trustee declares as follows:

1. Establishment of Trust. The Trustee promptly shall establish a segregated trust account in its corporate trust department which shall be known as the "Beede Waste Oil Early De Minimis Settlement Trust" ("Trust").

2. Declaration of Purpose. The Trust is established and shall be administered by the Trustee for the purpose of holding, investing and disbursing funds collected from the Respondents entering into the settlement agreement between the EPA and the Respondents regarding the Site (the "Consent Order"). The EPA is the beneficiary of the Trust.

3. Payments

a. The Trustee shall have no authority or responsibility hereunder to collect any contributions to the Trust from any party and shall have no responsibility hereunder or otherwise with respect to the Respondents' compliance with the terms of the Consent Order.

b. The Trustee shall promptly deposit into the Trust all payments received from Respondents. The Trustee shall maintain a record of the name and address of each Respondent making a payment together with the amount and date of the payment.

**Appendix D - Beede Waste Oil Superfund Site  
Early De Minimis Settlement Trust**

**4. Principal, Interest and Expenses of Trust**

a. All monies deposited in the Trust or earned by the investment or reinvestment of such monies ("Trust Funds") shall remain in the Trust and may not be withdrawn by any person, except to make the refunds required by Paragraph 6, payments required by Paragraph 7, or to pay taxes and expenses associated with tax return preparation and filings as provided in Paragraph 12.

b. The Trust Funds shall be used by the Trustee to pay taxes incurred by the Trust as well as any tax return preparation expenses, and tax filing fees. The remaining Trust Funds will remain in the Trust and may not be withdrawn by any person, except to make the refunds provided under Paragraph 6 or the payments provided under Paragraph 7.

c. The Trustee may deduct from the Trust Fund such fees as described in the Fee Schedule attached as Appendix A hereto.

5. Investment of Trust Funds. The Trustee shall deposit and hold all Trust Funds in an account and shall invest such funds in State Street's Insured Money Market Account unless otherwise directed in writing by the Director, Office of Site Remediation & Restoration ("OSRR"), U.S. Environmental Protection Agency - New England Office ("Director, OSRR"). All earnings received from the investment of the Trust Funds shall be credited to, and shall become a part of, the Trust, (and any losses on such investments shall be debited to the Trust). The Trustee shall have no liability for any investment losses, including without limitation any market loss on any investment liquidated prior to maturity in order to make a payment required hereunder.

**6. Refunds**

a. Refunds from the Trust. Promptly upon receipt by the Trustee of a certificate from the Director, OSRR stating that the EPA decided not to enter into the Consent Order, the Trustee shall refund promptly all contributions previously made to the Trust by the Respondents. Any such refund shall include the original principal amount of the payment and any earnings from the investment of such amounts, less accrued taxes and a pro-rata share of any Trustee fees.

b. Refunds to Individual Respondents. If at any time prior to approval of the Consent Order, (i) new information shows that a Respondent sent hazardous waste to the Site for treatment or disposal in excess of 1000 gallons; or (ii) EPA determines based on new information that a Respondent's hazardous waste disproportionately contributed to the cumulative toxic or other hazardous effects of the waste at the Site, such Respondent shall be disqualified from participation in this Consent Order, and the Trustee shall, within thirty (30) days of receipt of written notification by EPA of such disqualification, refund such Respondent's trust payment and any earnings from the investment of such amounts, less accrued taxes and a pro-rata share of any Trustee fees.

**Appendix D - Beede Waste Oil Superfund Site  
Early De Minimis Settlement Trust**

**7. Disbursements from the Trust.**

a. Except as provided in Paragraphs 4.b, 4.c, 6, 12, or 14, the Trustee shall not make any disbursements from the Trust until it has received written notice from the EPA that the Consent Order has been approved and requesting disbursement of the Trust Funds.

b. Within 30 days of receipt of written notice of approval of the Consent Order, the Trustee shall disburse the Trust Funds to the EPA less amounts to be refunded pursuant to Paragraph 6 or paid pursuant to Paragraphs 4.b, 4.c, 6, 12, or 14.

c. All payments under this Paragraph shall be made by check, shall be accompanied by a transmittal letter and shall be delivered to the payee as follows:

**EPA Superfund**

Superfund Accounting, Region I  
P.O. Box 360197M  
Pittsburgh, PA 15251

The payment to the EPA shall be made to the Beede Waste Oil Special Account of the EPA Hazardous Substances Superfund. The Trustee shall send a copy of each check and transmittal letter to the EPA as provided in Paragraph 8.

8. Notices. All notices, demands, and requests given or required to be given hereunder shall be deemed given if delivered by hand pursuant to signed receipt or mailed by registered or certified United States mail, postage prepaid, return receipt requested, and shall be addressed as follows:

As to EPA:

Superfund Legal Office  
Attn: Beede Waste Oil Site Documents  
U.S. EPA, Region I  
One Congress Street, Suite 1100 (SES)  
Boston, MA 02114-2023

Trustee:

by first class mail to:

State Street Bank and Trust Company  
Global Investors Services Group  
Corporate Trust  
P.O. Box 778  
Boston, Massachusetts 02102-0778  
Attention: Beede Waste Oil Superfund Site Settlement  
Trust

if by fax, addressed as above and sent to the following telecopy number:

617-662-1466

**Appendix D - Beede Waste Oil Superfund Site  
Early De Minimis Settlement Trust**

if by hand, certified or registered mail or overnight courier or delivery, to:

State Street Bank and Trust Company  
Global Investors Services Group  
Corporate Trust, 6<sup>th</sup> Floor  
2 Avenue De Lafayette  
Boston, Massachusetts 02111-1724  
Attention: Beede Waste Oil Superfund Site Settlement  
Trust

9. Concerning the Trust. The Trustee acts as a trustee only and not personally, and in respect of any contract, obligation or liability made or incurred by the Trustee in good faith, all persons shall look solely to the Trust and not to the Trustee personally. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, including in following instructions provided pursuant to the provisions of this Declaration with respect to the payment of monies hereunder. The Trust shall indemnify and hold harmless the Trustee from and against any personal liability by reason of any action or failure to act or conduct in his/her official capacity, made in good faith. The Trustee (i) shall not be responsible for the Consent Order, or for determining or compelling compliance therewith, and shall not otherwise be bound thereby; (ii) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Agreement on its part to be performed, and no implied duties or obligations of any kind shall be read into this Agreement against or on the part of the Trustee; (iii) may consult counsel satisfactory to it, including in-house counsel, and the opinion or advice of such counsel in any instance shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion or advice of such counsel. In no event shall the Trustee be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Trustee has been informed of the likelihood of such loss or damage and regardless of the form of action.

10. Disputes. In the event a dispute of any kind arises in connection with this Agreement (including any dispute concerning indemnification of the Trustee), the Trustee may, in his/her sole discretion, elect to commence an interpleader action and pay all or any portion of the Trust Funds to the United States District Court for the District of New Hampshire and to provide a complete accounting of all monies paid into the Trust or paid out of the Trust by the Trustee. In the event of such payment, it is understood that Trustee will have no further obligation to the Respondents, and/or the EPA with respect to the amount so paid.

11. Inalienability of Interests of Beneficiaries. The interest of each beneficiary in the income or principal of the Trust hereunder shall be free from the control or interference of any creditor and shall not be subject to assignment, attachment, anticipation or alienation.

12. Interest, Expenses and Taxes of the Trust. The interest or other income earned on the principal in the Trust will be used to pay the expenses of the Trust, including, without limitation, the initial acceptance fee, administration fees, causing tax returns to be prepared, legal

**Appendix D - Beede Waste Oil Superfund Site  
Early De Minimis Settlement Trust**

expenses directly related to, and reasonably necessary for, the management of the Trust, transaction fees, taxes, if any, incurred by the Trust, tax filing fees, and other miscellaneous expenses of the Trust. The remaining interest or income earned on the principal in the Trust will remain in such Trust to be used for funding of future response actions at the Site.

13. Accounting. By December 30, 2000, the Trustee shall prepare a statement setting forth each payment received by the Trustee, the identity of the Respondent making such payment, the date such payment was received, the total amount of Trust Funds in the Trust, the amount of any interest and/or income earned on the Trust Funds, and the amount of any taxes paid by the Trustee. The Trustee shall prepare an updated accounting quarterly thereafter until the Trust is terminated, which accounting shall be prepared in accordance with generally accepted accounting procedures. Said accountings shall be sent to the EPA as provided in Paragraph 8.

14. Tax Treatment and Tax Return Preparation. It is intended that this Trust be a Qualified Settlement Fund under Internal Revenue Code Section 468B and Reg. 1.468(B) and taxable as a so-called complex trust to which Internal Revenue Code Sections 661, 662 and 663 apply and not as a partnership, corporation or grantor trust, that is, a trust whose property is deemed to be owned by one or more grantors or other persons pursuant to one or more of the Internal Revenue Code Sections 671 through 678. The Trustee (or a tax administrator engaged by the Trustee at the expense of the Trust) shall file tax returns for the Trust on the assumption that it is a complex trust, unless and until it is determined or the Trustee otherwise has reason to believe the Trust is other than a complex trust. In the event this Trust is determined, or is in the sole judgment of the Trustee at risk of being determined, to be other than a trust which is taxable as such a complex trust and it is prudent to reorganize the Trust so that it shall be such a complex trust, then the Trustee is authorized to execute such amendment to this Trust Agreement, restatements of this Trust Agreement, new trust agreement, instruments of assignment, plans of reorganization and other documents as are appropriate to enable the Trust or a successor to the assets of the Trust to be a trust which is taxable as such a complex trust; provided always, in no event shall the effect of any such reorganization be to change the purposes hereof, divert the assets of this Trust otherwise than for its original purposes set forth herein or enlarge the powers or responsibilities of the Trustee.

15. Trustee Compensation. The Trustee shall receive compensation for its services as a Trustee under this Trust Agreement pursuant to the Fee Schedule attached hereto as Appendix A. The Fee Schedule shall be binding upon the Trustee, and any change to the Fee Schedule shall become effective only upon the written approval of the EPA.

16. Appointment of Successor Trustee.

a. The Trustee may resign at any time by delivering his/her resignation, in writing, to the EPA, such resignation to take effect upon the appointment of a successor Trustee.

b. The EPA may remove the Trustee at any time, by delivering notice of such removal in writing to the Trustee, such removal to take effect ten days thereafter, or on such later date that may be specified in the notice.

**Appendix D - Beede Waste Oil Superfund Site  
Early De Minimis Settlement Trust**

c. Any vacancy in the office of the Trustee created by bankruptcy, insolvency, death, disability, resignation, removal or succession, as provided herein, shall be filled by an appointment in writing of a successor Trustee.

d. Any successor Trustee shall be appointed by the Director, OSRR.

e. Acceptance of appointment as a successor Trustee shall be in writing and shall be mailed to the EPA as provided in Paragraph 8.

f. A successor trustee shall have all of the rights, powers, duties, authority and privileges as if initially named as a Trustee hereunder.

g. A copy of each instrument of resignation, removal, appointment and acceptance of appointment shall be attached to an executed counterpart of this Trust Agreement in the custody of the Trustee and a copy shall be furnished to the EPA.

17. Choice of Law. This Trust Agreement shall be administered, construed, and enforced according to the laws of the State of New Hampshire except to the extent that federal law shall apply to questions arising under CERCLA or the National Contingency Plan, including any amendment thereto.

18. Consent to Jurisdiction and Services. The Trustee absolutely and irrevocably consents and submits to the jurisdiction of the courts of the State of New Hampshire and of any Federal court located in said State in connection with any actions, proceedings or disputes arising out of or relating to this Agreement. In any such action, proceeding or dispute, the Trustee hereby absolutely and irrevocably waives personal service of any summons, complaint, declaration or other process provided that the service thereof is made by certified or registered mail directed to the Trustee at his/her address in accordance with Paragraph 8.

19. Termination. This Agreement will terminate upon the disbursement of all of the Trust Funds in accordance with the provisions of Paragraph 7.

20. Modifications. This Agreement may not be altered or modified without the express written consent of the Director, OSRR.

21. Reproduction of Documents. This Agreement and all documents relating hereto, including, without limitation, (a) consents, waivers and modifications which may hereafter be executed, and (b) certificates and other information previously or hereafter furnished, may be reproduced by any means. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not such reproduction was made by the Trustee in the regular course of business, and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

22. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



Appendix D - Beede Waste Oil Superfund Site  
Early De Minimis Settlement Trust

IN WITNESS WHEREOF, the Trustee hereunder has caused this Declaration to be executed as of the day and year first written above.

1/10/01  
Date

Trustee:

State Street Bank and Trust Company, a  
Massachusetts bank and trust company, acting in its  
capacity as Trustee as aforesaid and not its  
individual corporate capacity

by CLM

title Vice President

hereunto duly authorized.

**Appendix D - Beede Waste Oil Superfund Site  
Early De Minimis Settlement Trust**

**APPENDIX A**

**FEE SCHEDULE**

The Trustee shall be paid the fees set forth in this Appendix. Such fees shall be the only compensation paid to the Trustee for performing her/his responsibilities pursuant to this Agreement and shall include all expenses of the Trustee in managing the Trust, including, without limitation: fees of administration; fees for providing accountings of such monies in the Trust Fund as are requested by the Director, OSRR; transaction fees; fees for investment of the monies that are in the Trust; and such other miscellaneous expenses as are incurred by the Trustee in carrying out his/her responsibilities under this Agreement. In addition, the Trustee shall be reimbursed (i) for any legal expenses relating to and reasonably necessary for the management of the Trust; and (ii) for other out of pocket expenses.

<b>Administration Fee</b>	<b>\$3,500.00</b>
Plus:	\$35.00 per Respondent
<b>Investment Fees</b>	
SsgA or selected other Money	40 basis points per annum
Market Fund	of the average daily net assets
State Street's Insured Money	No charge
Money Account	
<b>Counsel Fees</b>	Billed as Incurred
	(Estimate \$1,000.00)
<b>Out of Pocket Expenses</b>	Billed as Incurred



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

January 25, 2001

Mr. Chi C. Ma, Vice President  
Corporate Trust  
State Street Bank & Trust  
2 Avenue de Lafayette  
6th Floor  
Boston, MA 02111-1724

Re: Declaration of Trust - Beede Waste Oil Early De Minimis Settlement Trust

Dear Mr. Ma:

There is a printing error in the Declaration of Trust for the Beede Waste Oil Early De Minimis Settlement Trust in paragraph number 13 "Accounting" on page 5, where it states that the Trustee's first statement shall be prepared by December 30, 2000. Instead, that paragraph should read that the Trustee's first statement shall be prepared by June 30, 2001. The paragraph now states in full:

13. Accounting. By June 30, 2001, the Trustee shall prepare a statement setting forth each payment received by the Trustee, the identity of the Respondent making such payment, the date such payment was received, the total amount of Trust Funds in the Trust, the amount of any interest and/or income earned on the Trust Funds, and the amount of any taxes paid by the Trustee. The Trustee shall prepare an updated accounting quarterly thereafter until the Trust is terminated, which accounting shall be prepared in accordance with generally accepted accounting procedures. Said accountings shall be sent to the EPA as provided in Paragraph 8.

Please indicate your agreement by signing and dating below and returning to Kristin Balzano at U.S. Environmental Protection Agency, Office of Environmental Stewardship, Superfund Legal Office (SES), 1 Congress Street - Suite 1100, Boston, MA 02114-2023.

January 25, 2001  
Date

Trustee:

State Street Bank and Trust Company, a Massachusetts bank and trust company, acting in its capacity as Trustee as aforesaid and not its individual corporate capacity

by [Signature]

title [Signature]  
hereunto duly authorized

cc: Donald Vaughan Esquire

Toll Free • 1-888-372-7341

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